



From: Jessie Goldfarb/ENF/R8/USEPA/US
To: kmurray@chapman.com
cc: Mia Wood/ENF/R8/USEPA/US@EPA, Kathryn Hernandez/EPR/R8/USEPA/US@EPA
Date: Wednesday, May 21, 2008 03:26PM
Subject: Lower Silver Creek - Proof of Claim

As promised.

Attachments:

Document49.pdf



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Telephone (202) 305-0427
Facsimile (202) 616-6583

May 19, 2008

ASARCO, LLC
c/o The Trumbull Group, LLC
4 Griffin Rd. North
Windsor, CT 06095-1511

Re: Supplemental Proof of Claim of the United States
for the Richardson Flat Tailings Site

Dear Sir/Madam:

Please find enclosed a Supplemental Proof of Claim of the United States on behalf of the Environmental Protection Agency to update its Proof of Claim under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, for the Richardson Flat Tailings Site, filed on or about August 1, 2006.

Sincerely,

Britta G. Hinrichsen
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice

Enclosure

cc:

Jessie Goldfarb, U.S. EPA Region 8
Tony Davis, Baker Botts, LLP

UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF TEXAS		PROOF OF CLAIM
Name of Debtor ASARCO, LLC	Case Number 05-21207	THIS SPACE IS FOR COURT USE ONLY
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): United States of America on behalf of U.S. Environmental Protection Agency	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and Address where notices should be sent: Britta G. Hinrichsen U.S. Department of Justice/ENRD/EES P.O. Box 7611 Washington, DC 20044 Telephone Number: 202-305-0427		
Account or other number by which creditor identifies debtor:	Check here if <input type="checkbox"/> replaces this claim <input checked="" type="checkbox"/> amends a previously filed claim, dated: 07/28/06	
1. Basis for Claim <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> Contribution, Indemnity or Guaranty <input checked="" type="checkbox"/> Environmental <input type="checkbox"/> Equipment Financing <input type="checkbox"/> Contract <input type="checkbox"/> Expenses <input type="checkbox"/> Goods sold </div> <div style="width: 33%;"> <input type="checkbox"/> Goods Purchased <input type="checkbox"/> Letters of Credit or Surety Bonds <input type="checkbox"/> Litigation <input type="checkbox"/> Long Term Disability <input type="checkbox"/> Mechanic's Liens <input type="checkbox"/> Money Loaned </div> <div style="width: 33%;"> <input type="checkbox"/> Personal Injury / Wrongful Death <input type="checkbox"/> Officer Indemnity <input type="checkbox"/> Other <input type="checkbox"/> Other Financing <input type="checkbox"/> Pension Insurance <input type="checkbox"/> Professional Fees </div> <div style="width: 33%;"> <input type="checkbox"/> Reclamation Notices <input type="checkbox"/> Refund <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Taxes <input type="checkbox"/> Trade Payables <input type="checkbox"/> Unknown </div> <div style="width: 33%;"> <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS# _____ Unpaid compensation for services performed from _____ to _____ <input type="checkbox"/> Collectively bargained obligations <input type="checkbox"/> Worker's Compensation </div> </div>		
2. Date debt was incurred: See attached	3. If court judgment, date obtained:	
4. Total Amount of Claim at Time Case Filed: \$ <u>See attached</u> (unsecured) <u>See attached</u> (secured) <u>See attached</u> (priority) <u>See attached</u> (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at the time case filed included in secured claim, if any: \$ _____	7. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000), * earned within 180 days before the filing of the bankruptcy petition or cessation of the debtor's business, which ever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). <i>* Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. \$10,000 and 180-day limits apply to cases filed on or after 4/20/05. Pub. L. 109-8.</i>	
6. Unsecured Nonpriority Claim \$ <u>See attached</u> <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		
8. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 9. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 10. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date 05/19/2008	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) Britta G. Hinrichsen, Trial Attorney 	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
(Corpus Christi Division)**

In re	§	Case No. 05-21207
	§	
ASARCO, LLC, et al.	§	Chapter 11
	§	
Debtors	§	Jointly Administered
	§	

**SUPPLEMENTAL PROOF OF CLAIM OF THE UNITED STATES
ON BEHALF OF THE ENVIRONMENTAL PROTECTION AGENCY
AGAINST ASARCO, LLC, TO UPDATE THE PROOF OF CLAIM FOR THE
RICHARDSON FLAT TAILINGS SITE**

The United States files this Supplemental Proof of Claim against ASARCO, LLC, (“ASARCO”) at the request of the United States Environmental Protection Agency (“EPA”) to update its Proof of Claim under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675, with respect to the Richardson Flat Tailings Site and the related downstream contamination referred to herein as the Lower Silver Creek area, both located near Park City in Summit County, Utah.

On February 16, 2006, the United States filed its Initial Proof of Claim (Secured) of the United States on Behalf of the EPA, Department of Agriculture and the Department of the Interior (“U.S. Initial Proof of Claim”). On or about August 1, 2006 and thereafter, the United States filed several supplemental proofs of claims against ASARCO and other Debtors. All allegations contained in the United States’ previously filed proofs of claim are fully preserved.

1. The August 1, 2006 Proof of Claim asserted a claim for the Richardson Flat Tailings Site, paragraphs 126 through 129 of which are incorporated herein.
2. This claim focuses on the Lower Silver Creek area and is supplemental to and in

addition to the August 1, 2006 Proof of Claim.

3. The Richardson Flat Tailings Site ("Richardson Flat") is located northeast of Park City, in Summit County, Utah.

4. Richardson Flat was used as a depository for mining and mill tailings and is located adjacent to Silver Creek.

5. Contamination from Richardson Flat has migrated downstream along Silver Creek to the Lower Silver Creek area.

6. EPA has been assessing the extent of contamination downstream in the Lower Silver Creek area.

7. To date, EPA has designated Richardson Flat and the Lower Silver Creek area as two distinct but related sites.

8. Because of the interconnection between Richardson Flat and the Lower Silver Creek area, for the purposes of this supplemental proof of claim only, it is appropriate to include the Lower Silver Creek area as part of Richardson Flat.

9. A predecessor-in-interest to ASARCO, American Smelting and Refining, Co., owned or operated facilities at Richardson Flat and in the Lower Silver Creek area at the time hazardous substances were disposed of at such facilities.

10. A predecessor-in-interest to ASARCO, American Smelting and Refining, Co., arranged for the disposal, or arranged with a transporter for the transport for disposal, of hazardous substances that it owned or possessed at the facilities at Richardson Flat and in the Lower Silver Creek area.

11. Richardson Flat and the Lower Silver Creek area are facilities and contain

facilities within the meaning of CERCLA. There have been releases or threatened releases of hazardous substances at Richardson Flat and in the Lower Silver Creek area. Response costs will be incurred by EPA at Richardson Flat and in the Lower Silver Creek area not inconsistent with the National Contingency Plan ("NCP") promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and set forth at 40 C.F.R. Part 300, as amended.

12. ASARCO is jointly and severally liable to the United States with respect to Richardson Flat and the Lower Silver Creek area under Sections 107(a)(2) and (3) of CERCLA, 42 U.S.C. §§ 9607(a)(2) and (3).

13. ASARCO is liable to reimburse the United States for the costs (plus interest due under 42 U.S.C. § 9607(a)) of actions taken or to be taken by the United States in response to releases and threatened releases of hazardous substances at Richardson Flat and in the Lower Silver Creek area.

14. In addition to the \$607,000 asserted in the United States' August 1, 2006 Proof of Claim for Richardson Flat, the United States estimates at this time that its future response costs at Richardson Flat and in the Lower Silver Creek area will total approximately \$50 million. These costs are associated with EPA's planned response action, which includes excavation and removal of tailings as well as revegetation.

15. Other potentially responsible parties may, along with ASARCO, also be jointly and severally liable under CERCLA with respect to the Lower Silver Creek area.

16. The United States reserves the right to amend this Supplemental Proof of Claim to assert subsequently discovered liabilities. The United States also reserves the right to amend this Supplemental Proof of Claim to update response costs or other information relating to

Richardson Flat and the Lower Silver Creek area included herein. This Supplemental Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

17. This Supplemental Proof of Claim is filed as a general unsecured claim except to the extent of insurance proceeds.

18. No judgments against ASARCO have been rendered on this Supplemental Proof of Claim.

19. No payments have been made by ASARCO on this Supplemental Proof of Claim.

20. This Supplemental Proof of Claim is filed to the extent necessary to protect the United States' rights relating to any insurance proceeds received by ASARCO relating to facilities discussed herein.

21. Additional documentation in support of this Supplemental Proof of Claim is too voluminous to attach and is available upon request.

Respectfully submitted,



ALAN S. TENENBAUM

DAVID L. DAIN

BRITTA G. HINRICHSEN

Environment & Natural Resources Division

Environmental Enforcement Section

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OF COUNSEL:

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